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OFFICE OF PETITIONS

In re Application of	:
Renee M. KOVALES et al.	:
Application No. 09/782,773	: DECISION ON PETITION
Filed: February 13, 2001	: 37 CFR 1.181
Attorney Docket No. RSW920000128US1	:

This is a decision on the petition under 37 CFR 1.181, received July 31, 2003, requesting deletion or abandonment of a previously filed Request for Continued Examination (RCE), and refund of the RCE filing fee.

The petition is **DISMISSED as moot**.

A non-final Office action was mailed on March 31, 2003, setting a three month shortened statutory period for reply. On June 30, 2003, Applicants filed an amendment in response to the non-final Office action. On July 3, 2003, Applicants filed an RCE accompanied by a submission in the form of a preliminary amendment¹. On July 31, 2003, Applicants filed a continuation application pursuant to 37 CFR 1.53(b) accompanied by the instant petition, asserting that the July 3, 2003 RCE was filed in error, and requesting deletion or abandonment of the RCE and a refund of the filing fees therefor. No final Office action, Notice of Allowability, or other action closing prosecution was mailed in the instant application.

However, pursuant to MPEP 706.07(h)(III), Technology Center personnel will verify that, *inter alia*, prosecution in an application is closed. Where all of the conditions for filing a proper RCE have not been met, Applicant will be so notified, generally via a "Notice of Improper Request for Continued Examination (RCE)," Form PTO-

¹The preliminary amendment filed with the instant petition was intended as a preliminary amendment to the continuation application and not a submission within the meaning of 37 CFR 1.114(c).

2051. If prosecution in the application is not closed, Applicant will be notified of the improper RCE and any amendment or reply will be entered. Thereafter, the application will be forwarded to the examiner for consideration of the amendment/reply under 37 CFR 1.111.

The RCE filing fee in the amount of \$750 is being credited to petitioner's deposit account 09-0461.

The instant application is being forwarded to Technology Center 2600 for treatment of the improper RCE and subsequent action on the merits of the amendment filed June 30, 2003.

Inquiries regarding this communication should be directed to the undersigned at (703) 305-1820.

A handwritten signature in black ink, appearing to read "Brian Hearn", with a stylized flourish at the end.

Brian Hearn
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy